

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

PHL AIRPORT HOTEL d/b/a MICROTTEL INN & SUITES¹

Employer

and

Case 4–RC–20151

HOTEL EMPLOYEES, RESTAURANT
EMPLOYEES INTERNATIONAL UNION,
LOCAL 274, AFL–CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The Employer operates a hotel located approximately one-half mile from the Philadelphia Airport, herein called the Hotel. The Petitioner seeks to represent a unit of full-time and regular part-time housekeepers, laundry employees and maintenance employees. The Employer takes the position that the only appropriate unit is a wall-to-wall unit that must also

¹ The Employer's name appears as amended at the hearing.

include front desk employees and van drivers. The Employer also seeks to exclude Secondary Housekeeping Supervisor Kelly Carlin and Maintenance Supervisor Gilbert Perez on the ground that they are supervisors within the meaning of Section 2(11) of the Act.² The Petitioner has indicated that it would be willing to proceed to an election in any unit found appropriate.

The Hotel is a three-story building consisting of 132 guestrooms. It is a “limited service” facility with no restaurant, bar or pool. About 23 employees work at the Hotel. General Manager Barbara Kummerer has day-to-day responsibility for the Hotel’s operations. She reports to Richard Schaeffer, Vice-President of Operations. Assistant General Manager Amy Lamond reports to Kummerer, and Housekeeping Supervisor Daley and Maintenance Supervisor Perez report directly to Lamond. If there is no housekeeping supervisor or maintenance supervisor available, employees in those departments report directly to Lamond. Lamond also supervises the front desk employees and van drivers. Employees report problems or complaints to their department supervisors or managers. If the problem is not resolved at that stage, the employee can report it to Kummerer and/or Schaeffer. Kummerer has her own office in an area behind the front desk, and she maintains all personnel files there. Lamond shares an office with Daley near Kummerer’s office.

All employees are subject to the same rules and regulations, which are set out in the Employer’s “Team Member Handbook.” All hourly employees are subject to the same probationary period and disciplinary policy, and enjoy the same benefits, including health insurance, holidays and vacation, once they have been employed for six continuous months. Employees and supervisors are all required to clock in and out. All notices and memoranda to employees, except employee schedules, are posted by the time clock. There is an employee break room on the second floor of the Hotel, which is the only smoking area. However, front desk employees and van drivers do not have keys to the break room and in order to use it, they must ask other employees for the keys. The break room also contains lockers, which are available to all employees. The Employer conducts meetings for different departments, but does not conduct meetings for all Hotel employees as a group. Assistant Manager Lamond and the department supervisors handle hiring.³ No specific education or experience is required for any employee position, although van drivers require a driver’s license and a clean driving record.

Housekeeping Supervisor Daley is in charge of approximately 11 housekeepers and 2 laundry employees. Housekeepers are primarily responsible for cleaning guestrooms and the lobby area. They clean between 10 and 18 rooms a day at an average of 28 minutes per room. Housekeepers also routinely assist with laundry. Laundry employees are responsible for washing and folding the Hotel’s linen. Housekeepers and laundry employees are required to wear Employer-furnished uniforms consisting of a blue smock with the Employer’s logo and a nametag. They are also required to wear closed shoes. Daley posts weekly schedules for housekeepers and laundry employees at the front desk and in the employee break room on the second floor. Housekeeping and laundry employees’ work shifts start at 8:00 a.m., 9:00 a.m. and 11:00 a.m. They have no set ending time, but leave after cleaning all of their assigned rooms.

² The parties stipulated that Housekeeping Supervisor Cynthia Daley is a supervisor within the meaning of Section 2(11) of the Act. The parties further stipulated that Vice-President of Operations Richard Schaeffer, General Manager Barbara Kummerer and Assistant General Manager Amy Lamond should be excluded from the unit.

³ There is no evidence, however, that Maintenance Supervisor Perez has any involvement in hiring.

Since the amount of housekeeping work depends on the occupancy of the Hotel, some housekeepers may be asked not to report on a day they are scheduled if there is insufficient work. Similarly, housekeepers may be asked to work, although not scheduled, if there are too many rooms for the scheduled housekeepers to clean.

Maintenance Supervisor Perez is currently the only individual employed in the Maintenance Department although until January 2001, there was one other maintenance employee. Maintenance is responsible, among other things, for disposing of trash, stocking supplies for laundry and housekeeping, repairing equipment and property, vacuuming stairwells, replacing light bulbs, and general upkeep of the property. Perez learns of maintenance problems by inspecting the facility or by speaking to employees, most likely housekeepers, or managers. Generally, Perez works 8:00 a.m. to 4:30 p.m. five days a week. The maintenance schedule is posted, along with the housekeeping and laundry schedules, at the front desk and in the employee break room. When there was an additional maintenance employee, that employee would work the same hours as Perez, except that he would cover the two days that Perez was off. Maintenance employees are required to wear Employer-furnished uniforms consisting of a navy blue golf shirt with the Employer's logo.

The six to eight front desk employees are responsible for checking guests in and out, handling payments, answering the telephone, communicating the status of rooms to housekeepers, assisting guests, scheduling van runs for guests, and dispatching van drivers. Front desk employees work four shifts: 7:00 a.m. to 3:00 p.m.; 3:00 p.m. to 11:00 p.m.; 5:00 p.m. to 11:00 p.m.; and 11:00 p.m. to 7:00 a.m. The 11:00 p.m. to 7:00 a.m. shift is known as the night audit. Lamond prepares and posts the front desk schedule. The night audit employee, in addition to regular front desk responsibilities, performs the nightly audit, which involves balancing the day's credit card receipts, reconciling the cash for the day and ensuring that the status of each room is consistent with the housekeeping paperwork. Front desk employees are the only employees who have access to computers. They wear a yellow or navy blue button-down shirt with the Employer's logo on it and a nametag. Front desk employees are not permitted to wear denim or sneakers to work but can otherwise choose to wear their own professional-looking pants, skirts and shoes.

The two or three van drivers pick up and return guests to the Philadelphia Airport. They also may assist guests with luggage. Van service is available from 5:30 a.m. to midnight. There are two shifts: 5:30 a.m. to 2:00 p.m. and 4:00 p.m. to 12:00 a.m. During the two-hour period from 2:00 p.m. to 4:00 p.m., when there is no scheduled van driver, the Maintenance Supervisor, front desk employees and managers fill in when needed. Van drivers are issued two-way radios to communicate with the front desk regarding pickups or drop offs. Lamond posts van drivers' schedules at the front desk. The morning van driver is responsible for setting up a continental breakfast in the lobby area for guests every morning from 6:30 a.m. to 9:30 a.m. Van drivers do not currently wear a uniform, but they are required to wear nametags. The Employer is in the process of providing uniforms for van drivers that are the same as the maintenance employees' uniforms.

All of the employees and supervisors are paid on an hourly basis; only the managers are salaried. Kummerer and Lamond prepare payroll bi-weekly based on the timecards punched by employees. Housekeepers' and laundry employees' wages range from \$7.50 to \$8.00 per hour.

Housekeeping Supervisor Daley receives \$8.50 per hour. Secondary Housekeeping Supervisor Carlin earns \$7.75 per hour when she performs regular housekeeping duties and \$8.25 per hour when she covers for Daley on her days off. Maintenance Supervisor Perez earns \$14.00 per hour. Damon Williams, when he was employed as a maintenance employee, earned \$8.00 per hour, and former maintenance employee Eugene Pelzer earned \$7.75 per hour. Front desk employees' wages range from \$8.00 to \$10.00 per hour. Van drivers' wages range from \$7.50 to \$8.00 per hour. Employees are eligible for a raise after completing a 90-day probationary period and yearly after that. Wage rates for all employees are determined by Kummerer subject to Schaeffer's final approval. This past year, all employees received a year-end bonus from the Employer ranging from \$25.00 to \$150.00. Schaeffer, Kummerer and Lamond determined the amount of each bonus based strictly on the employees' service time with the Employer. The Employer does not prepare written evaluations of employees' work.

Employees from different departments interact with each other on a daily basis as a result of the Employer's small size. Thus, front desk clerks dispatch the van drivers, and also contact laundry employees for supplies needed by guests. Front desk and housekeeping employees contact maintenance employees as to problems reported by guests or noticed by employees, and van drivers contact maintenance employees when there are problems with the van. Maintenance employees dispose of the trash from the housekeeping carts and interact with laundry employees when there are problems with laundry equipment. Housekeepers communicate with front desk employees about the status of rooms they have to clean and assist laundry employees by helping to fold and sort laundry.

Employees also perform work from other departments as needed. Van drivers answer telephones at the front desk when front desk employees are busy. Front desk employees occasionally retrieve supplies from the laundry supply room when requested by guests. Recently, a front desk clerk resolved a guest complaint that a room had not been cleaned by bringing new supplies to the guest's room, emptying the trash and performing other housekeeping tasks in the room. Housekeepers and front desk employees also occasionally perform minor maintenance tasks such as changing light bulbs. Front desk employees or van drivers at times vacuum or mop the lobby, a housekeeping function. Maintenance and front desk employees drive the van during the period that no van driver is scheduled. Housekeepers dispose of their own trash, a maintenance job, twice a week when Maintenance Supervisor Perez is off.

Pursuant to its "cross training" policy, the Employer encourages employees to train in another department of their choice and eventually transfer to that department. More often than not, such transfers are from housekeeping and laundry to front desk positions. In May 2000, Letitia McLendon transferred from housekeeping to the front desk. Annie Blue, a front desk clerk, was originally hired as a housekeeper. Michelle Battle was hired as a housekeeper, promoted to Secondary Housekeeping Supervisor and then transferred to front desk. She worked in housekeeping and at the front desk from May through August 2000. Lawrence Currie was originally hired as a laundry/housekeeping employee and later transferred to the front desk. He also occasionally drives the van. Donna Douglas was hired as a housekeeper, served as Acting Secondary Housekeeping Supervisor for a two-week period, and is now a full time van driver. Currently, Kimberly Cook, a laundry employee who was originally hired as a housekeeper, is being trained as a front desk clerk. She is scheduled for two days per week in laundry and 18

hours at the front desk. Damon Williams started as a front desk employee, left the Hotel in August 2000, returned in late December 2000 or early January 2001 as a maintenance employee, and became a van driver in late January 2001. During the time he was a maintenance employee, Williams also occasionally drove the van. When Williams became a van driver he also worked at the front desk and continued to do some light maintenance work.

There is considerable evidence that employees have been paid for working in more than one job classification during a pay period. In this regard, the Employer's payroll records show approximately 25 instances where employees were paid for working in more than one department between May 1, 2000 through February 4, 2001.⁴ Of these, in eight instances housekeeping employees worked in laundry or vice versa.⁵ In about ten other situations employees from housekeeping, laundry or maintenance worked at the front desk and/or as van drivers, or front desk employees and/or van drivers worked in housekeeping, laundry or maintenance. Most significantly, from May through August 2000, Michelle Battle worked regular hours at both the front desk and in housekeeping. In May and June, Letitia McLendon worked in both housekeeping and at the front desk. In May, Lawrence Currie, a laundry employee who transferred to the front desk, worked 22.25 hours in laundry and 41.75 hours at the front desk. In June, he worked 111.5 hours as a van driver and 23.5 hours at the front desk. In August and October, Eugene Pelzer, a maintenance employee, had 59.25 and 20 hours, respectively, as a van driver. In September 2000, Kevin Sumpter, a housekeeping employee, worked 72.5 hours as a housekeeper and 3.75 hours driving the van one pay period and 72.5 hours as a van driver and 7.5 hours at the front desk the next pay period. In November, Thelma White worked 48.5 hours in laundry and 17.75 hours at the front desk. In January 2001, Damon Williams had 22 hours in maintenance, 31 hours as a van driver and 19.5 hours at the front desk for one pay period and 27 hours in maintenance, 17 hours as a van driver and 24.25 hours at the front desk for the next pay period. In the remaining instances, the front desk clerks and van drivers were paid for working in the other's department. Thus, from May through August 2000, Terrence Townsend worked regularly as both a front desk clerk and as a van driver. In July, Lawrence Currie, originally hired as a laundry person but now a van driver, worked some hours at the front desk in addition to his van driving duties.

Union Organizer Kevin Smith testified that Union bargaining units in four nearby hotels consisted of either solely housekeeping and laundry employees or housekeeping and maintenance employees and pool attendants.

In *Omni International Hotel*, 283 NLRB 475 (1987), the Board stated:

⁴ At the hearing, Kummerer admitted that for bookkeeping purposes there were additional instances, beginning September 1, 2000, where the payroll input sheets showed employees working in more than one department, but where employees did not actually work in the other department. In those situations, the housekeeping department was over budget so she placed housekeeping hours in another department that was not over budget. Kummerer was not able to testify whether the Employer engaged in such bookkeeping devices prior to the time that she started working there in September 2000.

⁵ Thus, in May and July 2000, Tina Mooney, a housekeeper, worked 44.75 and 32.5 hours, respectively, as a laundry employee. In June and September 2000, Stacy Smith, a housekeeper, worked 25.25 and 43.5 hours, respectively, as a laundry employee. In September and October 2000, Thelma White, a housekeeping employee, worked 120 hours in laundry. In January 2001, Kimberly Cook, a laundry employee, worked 30 hours in housekeeping.

It is not beyond peradventure that the Act allows a union to petition for *an* appropriate unit, and does not require it to seek the *most* appropriate unit, even when a different unit than that petitioned-for might be more appropriate than the one it seeks.

However, while the Board first considers the appropriateness of the unit sought by the petitioner, the petitioner's request is not binding or conclusive. *Overnite Transportation Company*, 322 NLRB 723 (1996). If the unit sought by the petitioner is inappropriate, the Board will scrutinize the employer's proposals. *Dezcon, Inc.*, 295 NLRB 109, 111 (1989).

As the Board has noted, for a six year period in the 1960s, it "applied a rigid rule that only an overall unit consisting of all hotel/motel employees would be found appropriate for bargaining." *Omni International Hotel*, supra. In 1966, the Board reversed *Arlington Hotel Co.*, 126 NLRB 400 (1960), which had established the rule, and announced that it would employ traditional community of interest criteria on a case-by-case basis. *Id.*, citing *Holiday Inn Restaurant*, 160 NLRB 927 (1966), enfd. 387 F.2d 646 (4th Cir. 1967). This principle was reaffirmed in *Omni International Hotel*, and it continues to be the principle applied by the Board today in making hotel/motel unit determinations. *Dinah's Hotel & Apartments*, 295 NLRB 1100, 1101 (1989).

Board unit determinations in the hospitality industry are based on the same community-of-interest criteria used in other industries, such as distinctions in skills and functions of particular employees, separate supervision, the employer's organizational structure, differences in wages and hours, integration of operations, employee transfers, interchange and contact, and bargaining history. *Stanford Park Hotel*, 287 NLRB 1291 (1988); *Omni International Hotel*, supra; *Maxim's de Paris Suite Hotel*, 285 NLRB 377 (1987); *Westin Hotel*, 277 NLRB 1506 (1986).

Based on the criteria set forth above and the record evidence, I find that the petitioned-for unit of housekeeping, laundry and maintenance employees is inappropriate, and only a wall-to-wall unit is appropriate. While in other circumstances a hotel unit excluding van drivers and front desk employees might be appropriate, considering the extensive evidence of contact, interchange and temporary and permanent transfers and the commonality of working conditions, employees in these departments must be included. There is regular, significant contact between employees in the different departments. Given the small size of the Hotel and the small number of employees, it is not surprising that employees in all departments interact with and assist each other on more than an occasional basis. For example, there is routine contact between maintenance employees, front desk employees and van drivers concerning maintenance problems. Similarly, there is regular contact between front desk employees and housekeepers concerning the status of rooms and regular communication between front desk and laundry employees concerning items needed by guests. Additionally, employees from some classifications at times perform the functions of other departments. Thus, front desk employees and van drivers engage in minor housekeeping and maintenance tasks when needed, front desk employees regularly fill in for van drivers, and van drivers answer telephones at the front desk. See *Ramada Beverly Hills*, 278 NLRB 691, 692-693 (1986); *Holiday Inn Alton*, 270 NLRB 1405 (1984). The record also demonstrates that because of the Employer's cross-training program,

there is a substantial degree of interchange between housekeeping, laundry and maintenance employees with front desk employees and van drivers. As detailed above, at least five current employees recently worked, during the same pay period, as van drivers or front desk employees, in addition to housekeeping, laundry or maintenance. It is simply not unusual for employees to work in several departments simultaneously. See *Atlanta Hilton & Towers*, 273 NLRB 87, 88-89 (1984) opinion vacated in part on reconsideration 275 NLRB 1413 (1985). The record also shows a significant number of permanent transfers between departments. The Board has stated that permanent transfers weigh less heavily than temporary interchange in assessing the community of interest shared by employees. See *Ore Ida Foods*, 313 NLRB 1016, 1020 fn. 4 (1994), enfd. 66 F. 3rd 328 (7th Cir. 1995); *Franklin Mint Corp.*, 254 NLRB 714, 716 (1981). Nonetheless, in a period of about a year, there have been five permanent transfers from the housekeeping, laundry and maintenance positions to front desk and van driver positions and one transfer from the front desk to maintenance and then back to the front desk. See *Atlanta Hilton & Towers*, 273 NLRB at 89. This extensive evidence of transfers and interchange between departments suggests blurred departmental lines and a truly fluid work force with roughly comparable skills. Cf. *Hilton Hotel*, 287 NLRB 359, 360 (1987).⁶ The fact that all employees receive the same fringe benefits, share a breakroom and other facilities and are hourly paid further militates in favor of an overall unit. *Ramada Beverly Hills*, 278 NLRB at 692; *Westin Hotel*, supra at 1508. Cf. *Dinah's Hotel & Apartments*, 295 NLRB at 1101. While there is separate daily supervision for the housekeeping and laundry departments, the maintenance, front desk and van drivers departments are all supervised by Lamond. Furthermore, housekeeping and laundry employees may speak directly to Lamond or Kummerer, and Kummerer sets their wage rate. While front desk employees are paid at a slightly higher wage rate than housekeeping and laundry employees, I am not persuaded that this is sufficient basis to overcome the other factors. Additionally, although there is no evidence in the record that the area wide practice favors overall bargaining units rather than housekeeping and maintenance units, this factor is not determinative. *Westin Hotel*, supra. Cf. *Holiday Inn City Center*, 332 NLRB No. 128, slip op. at 18 (2000). I find that, on balance, front desk employees and van drivers share a close community of interest with housekeepers, laundry and maintenance employees, and I shall include them in the same bargaining unit. *Atlanta Hilton*, supra; *Ramada Beverly Hills*, supra, *Golden Eagle Motor Inn*, 246 NLRB 323 (1979).

Contrary to the Petitioner, the Employer contends that Secondary Housekeeping Supervisor Carlin should be excluded as a supervisor. Carlin became Secondary Housekeeping Supervisor in early February 2001. She assumes Housekeeping Supervisor Daley's duties when Daley is scheduled off from work two days a week, as well as when Daley is out sick or on vacation. She spends the remainder of her time performing regular housekeeping duties. When substituting for Daley, Carlin receives \$.50 more per hour than her regular housekeeping rate. On those days, Carlin has the same responsibilities as Daley. She first prints out a list of the

⁶ In cases in which the Board rejected contentions that only an overall unit was appropriate, the Board often emphasized the paucity of permanent transfers. Thus, in *Holiday Inn City Center*, 332 NLRB No. 128 (2000), the Board noted that there were only two instances of employees transferring between departments. In *Dinah's Hotel & Apartments*, supra, 295 NLRB at 1100-1101, there were no permanent transfers, and in *Stanford Park Hotel*, supra, 287 NLRB at 1292, the Board stated that evidence of permanent transfers was "minimal at best."

status of all the rooms in the Hotel.⁷ She then subtracts the rooms which are “vacant ready,” i.e. cleaned and not occupied, from the list so as to determine how many rooms are to be cleaned that day. Next, she divides the rooms to be cleaned by the number of housekeepers scheduled to work that day. If there are not enough rooms to warrant a full staff, she has the authority to call off housekeepers. In doing so, she first makes sure not to call off any housekeeper who had been called off the day before. She also has the authority to call housekeepers to come in if there is too much work, but this has only happened once, and on that occasion she secured permission from Schaeffer. She was unable to get anyone to come in, however, so she divided the additional rooms equally between the housekeepers. After the rooms are divided, Carlin assigns sections of rooms to be cleaned to the housekeepers. The housekeepers each are regularly assigned to specific sections, and Carlin’s assignments reflect the regular practice. When she cannot assign a housekeeper to her regular section, she assigns the sections to housekeepers in the order their names appear on the schedule. She generally assigns herself five less rooms for cleaning than the number assigned to other housekeepers. After making the assignments, she cleans her rooms until 12:00 p.m. when she goes to the front desk to get the list of guests who are supposed to check out that day but have not yet done so. She then checks each room on her list to determine if that guest is checking out, updates the front desk, and finishes cleaning her own rooms. At the end of the day she is supposed to inspect the housekeepers’ work, but often does not have enough time to do so. When she is able to inspect rooms, if there is an item missing she usually gets it herself, although she has the authority to order a housekeeper to go back to a room and redo what is necessary. Carlin explained that she does the work herself because the housekeepers have generally left work and, in any case, she would only order a housekeeper back to a room if there were a major problem. At the end of the day, Carlin uses the computer to update what rooms were cleaned. During the time that Carlin substitutes for Daley, she has access to a master key that allows her to get into any hotel rooms and the supply closets; other housekeepers do not have the master key. Carlin does not have the authority to hire or fire any employees. Two days prior to the hearing in this matter, Kummerer told Carlin that she should write up a housekeeper for not calling out. She had never been told previously that she had the authority to issue disciplinary warnings. Daley, and not Carlin, prepares the weekly schedule for housekeeping and laundry employees.

The Employer also contends that Maintenance Supervisor Perez should be excluded as a supervisor. Perez did not testify at the hearing, but Kummerer testified concerning his duties and responsibilities. Perez works five days a week and determines which two days he will be off. Perez receives a significantly higher wage rate, \$14.00 per hour, than other employees. During the times that the Employer had other maintenance employees working with Perez, those employees received \$8.00 per hour. At those times, Perez performed the more complex maintenance work on the property while the other maintenance employee was responsible for routine maintenance jobs. Perez is responsible for maintaining certain licenses and fire extinguisher inspections for the Hotel. Kummerer could not testify as to whether Perez directed the other maintenance employee as to what jobs to do, other than one incident where she saw Perez tell Eugene Pelzer to pick up a broken bottle that was outside on the property. There is no evidence that Perez was involved in hiring, firing or disciplining any employees. On one occasion Perez and Pelzer asked Kummerer to promote Pelzer to an Assistant Maintenance Supervisor position, consistent with the previous General Manager’s decision. However,

⁷ She uses Daley’s password to log on to the computer. No other housekeeping employee has access to the computer.

Kummerer disregarded the previous General Manager's decision as well as Perez' recommendation, and did not promote Pelzer. Perez has the authority to purchase items on credit for the Employer at a local hardware store and has done so on numerous occasions. On at least one occasion, Pelzer also purchased items from the hardware store on credit. Unlike Lamond and Daley, Perez does not have an office.

A finding of supervisory status is warranted only where the individuals in question possess one or more of the indicia set forth in Section 2(11) of the Act. *Providence Hospital*, 320 NLRB 717, 725 (1996); *The Door*, 297 NLRB 601 (1990); *Phelps Community Medical Center*, 295 NLRB 486, 489 (1989). The statutory criteria are read in the disjunctive, and possession of any one of the indicia listed is sufficient to make an individual a supervisor. *Providence Hospital*, supra, 320 NLRB at 725; *Juniper Industries*, 311 NLRB 109, 110 (1993). The statutory definition specifically indicates that it applies only to individuals who exercise independent judgment in the performance of supervisory functions and who act in the interest of the employer. *NLRB v. Health Care & Retirement Corp.*, 511 U.S. 571, 574, 146 LRRM 2321, 2322 (1994); *Clark Machine Corp.*, 308 NLRB 555 (1992). The Board analyzes each case in order to differentiate between the exercise of independent judgment and the giving of routine instructions, between effective recommendation and forceful suggestion and between the appearance of supervision and supervision in fact. *Providence Hospital*, 320 NLRB at 725. The exercise of some supervisory authority in a merely routine, clerical or perfunctory manner does not confer supervisory status on an employee. *Id.*; *Juniper Industries*, supra, 311 NLRB at 110.

The burden of establishing supervisory status is on the party asserting that such status exists. *Fleming Companies, Inc.*, 330 NLRB No. 32, fn. 1 (1999); *Northcrest Nursing Home*, 313 NLRB 491, 496 fn. 26 (1993); see *Bennett Industries*, 313 NLRB 1363 (1994). The Board has cautioned that the supervisory exemption should not be construed too broadly because the inevitable consequence of such a construction would be to remove individuals from the protections of the Act. *Providence Hospital*, supra, 320 NLRB at 725; *Northcrest Nursing Home*, supra, 313 NLRB at 491. Where the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, the Board will find that supervisory status has not been established, at least on the basis of those indicia. *Phelps Community Medical Center*, supra, 295 NLRB at 490. The legislative history of Section 2(11) makes it clear that Congress intended to distinguish between employees performing minor supervisory duties and supervisors vested with genuine management prerogatives, and did not intend to remove individuals in the former category from the protections of the Act. S. Rep. No. 105, 80th Cong., 1st Sess., 4 (1974), reprinted in 1 Legis. Hist. 407, 410 (LMRA 1947). The legislative history also shows that Congress considered true supervisors to be different from lead employees or straw bosses that merely provide routine direction to other employees as a result of superior training or experience. *Id.*, reprinted at 1 Legis. Hist. at 410 (LMRA 1947). *Providence Hospital*, supra, 320 NLRB at 725; *Ten Broeck Commons*, 320 NLRB 806, 809 (1996). An individual will not be found to be a supervisor unless he or she has a "kinship to management." *Adco Electric*, 307 NLRB 1113 fn. 3 (1992), enf'd. 6 F.3d 1110, 144 LRRM 2763 (5th Cir. 1993); *NLRB v. Security Guard Service*, supra, 66 LRRM at 2250. Further, "supervisory direction" of other employees must be distinguished from direction incidental to an individual's technical training and expertise, and technical employees will not be found to be supervisors merely because they direct and monitor support personnel in the performance of specific job functions related to the

discharge of their duties. *Robert Greenspan, DDS*, supra, 318 NLRB at 76; *New York University*, 221 NLRB 1148, 1156.

Even when substituting for Daley, Carlin's responsibilities do not rise to the level of supervisory authority. It is undisputed that Carlin does not have the authority to hire or fire any housekeeping employee. Her main role is determining which rooms need to be cleaned and assigning housekeepers to clean them. These assignments are not based on any independent judgment as to the abilities of the other housekeepers, she simply assigns housekeepers to the rooms they usually clean or divides the rooms to equalize the work. Balancing work among staff members using an equitable method does not require the use of independent judgment. *Providence Hospital*, 320 NLRB 717 (1996). The Board recognizes that an employee does not become a supervisor merely because she gives some instructions or minor orders to other employees. *Byers Engineering Corp.*, 324 NLRB 740, 741 (1997). Moreover, the fact that Carlin has the authority to inspect the other housekeeping employees' rooms is insufficient to make her a supervisor. Inspection of work is a quality control function and does not rise to the level of supervisory authority. *Somerset Welding and Steel, Inc.*, 291 NLRB 913 (1988). Nor is the fact that she is sometimes obliged to call off employees to accommodate the amount of rooms that need to be cleaned, since any alterations are merely designed to equalize employee workloads and do not involve sufficient exercise of independent judgment to confer supervisory status. *Loyalhanna Care Center*, 332 NLRB No. 86 at slip. op. p. 3 (2000). Similarly, her authority to call off-duty housekeepers to report to work when the Hotel is short-handed falls short of the supervisory authority to assign work contemplated by Section 2(11) since she lacks the power to compel employees to report for work. *Loyalhanna Care Center*, supra; *Green Acres Country Care Center*, 327 NLRB 257, 258 (1998). Moreover, the record in this case does not establish that Carlin has the authority to make recommendations regarding discipline. In this regard, I note that Carlin's sole example of purported disciplinary authority occurred two days prior to the hearing, and Kummerer, not Carlin, made the disciplinary decision. Based on the foregoing, I find that the Employer has not sustained its burden of showing that Secondary Housekeeping Supervisor Carlin possesses the indicia of supervisory status set forth in Section 2(11) of the Act, and I shall include her in the unit.

With regard to the supervisory status of Perez, I note that there is no evidence showing that he has the authority to hire, fire or discipline any employees or to make effective recommendations regarding hiring, firing or discipline. The record also does not demonstrate that he assigns work to any other employees. In this regard, the fact that Perez instructed a maintenance employee on one occasion to redo a task also does not support a finding of supervisory status. *299 Lincoln Street, Inc.*, 292 NLRB 172, 183 (1988). Although Perez has the title of supervisor, the title is not dispositive of Section 2(11) status. *Magnolia Manor Nursing Home, Inc.*, 260 NLRB 377, 385, n. 29 (1982). Status as a statutory supervisor is determined by actual job duties, not by title or classification. *Seven-Up Bottling of Phoenix*, 263 NLRB 596, 604 (1982). Furthermore, the fact that Perez earns significantly higher wages than any other employee and has the authority to charge items to the Hotel are, at best, secondary indicia of supervisory status and cannot transform him into a statutory supervisor in the absence of any evidence that he possesses at least one of the statutory indicia. Accordingly, I find that the Employer has not sustained its burden of proving that Maintenance Supervisor Perez is a supervisor within the meaning of Section 2(11) of the Act, and I shall include him in the unit.

Accordingly, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time front desk employees, van drivers, housekeepers, laundry employees, and maintenance employees employed by the Employer at its hotel located in Philadelphia, Pennsylvania, excluding guards and supervisors as defined in the Act.

The Petitioner's showing of interest may now be inadequate due to the additional employees included in the unit as a result of this Decision. Accordingly, the Petitioner has ten days from the issuance of this Decision to augment its showing of interest, if necessary. If the Petitioner fails to submit an adequate showing of interest within this period, the Petition will be dismissed without further order. The Direction of Election set forth below is thus conditioned on the Petitioner having an adequate showing of interest.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently,⁸ subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

**HOTEL EMPLOYEES, RESTAURANT EMPLOYEES
INTERNATIONAL UNION, LOCAL 54, AFL-CIO**

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access

⁸ Your attention is directed to Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays, and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the **full** names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region Four within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. I shall, in turn, make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106, on or before **April 6, 2001**. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of **3 copies**, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed preliminary checking and the voting process itself, the names should be alphabetized (overall, or by department, etc.). If you have any questions, please contact the Regional Office.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, NW, Room 11613, Washington, D.C. 20570. This request must be received by the Board in Washington by **April 13, 2001**.

Signed: March 30, 2001

at Philadelphia, PA

/s/ Dorothy L. Moore-Duncan

DOROTHY L. MOORE-DUNCAN
Regional Director, Region Four

177-8580-7000
440-1760-7880

lym:\C:\MYDOC\DECISION WRITING\D0420151.DOC